



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Creative Systems Electronics, Inc.--
Reconsideration

File: B-230963.3

Date: February 24, 1989

DIGEST

Protester's request that its untimely-filed comments on the agency report be considered does not provide a basis to reopen the protest which was dismissed due to the protester's failure to file its comments in a timely manner. The protester was required by the Bid Protest Regulations to either file its comments or a statement requiring that the protest be considered on the existing record or request an extension within 10 working days of receipt of the agency report. Its failure to do so resulted in a proper dismissal.

DECISION

Creative Systems Electronics, Inc., requests reconsideration of our dismissal of its protest under request for proposals No. MDA903-87-R-0057, issued by the United States Army's Defense Supply Service-Washington. We dismissed the protest because Creative failed to file its comments on the agency report within the 10 working days required by our Bid Protest Regulations, 4 C.F.R. § 21.3(k) (1988). Creative does not deny that its comments were filed late, but simply requests reconsideration on the basis that it allegedly submitted its comments by facsimile on November 14.

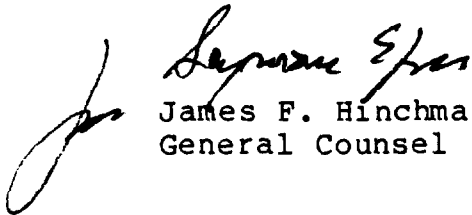
First, although Creative has provided us with a copy of a "Transmission Log" showing a facsimile transmission of a document on November 14, our Office has no record of the receipt of a document on that date. In any event, even if Creative did transmit its comments on the report at that time they would have been almost 3 weeks late and they would not have provided us a basis upon which to reopen the

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protest. Our Regulations provide that the protester must file comments, or a statement requesting that the protest be decided on the basis of the existing record, or request an extension of the period for submitting comments within 10 working days of receipt of the agency's report on the protest. 4 C.F.R. § 21.3(k). They further provide for our Office's dismissal of the protest without action if we do not timely hear from the protester.

Since our Regulations and a written notice sent to Creative acknowledging its protest expressly put the protester on notice of the requirements for the protester's filing in response to the agency report (our written notice also advised Creative that the report was due on October 24), it was incumbent on the protester to exercise the degree of diligence necessary to comply with those requirements. CooperVision, Inc.--Reconsideration, B-231698.2, Aug. 26, 1988, 88-2 CPD ¶ 186. The protester admittedly did not comply with the requirements.

The request for reconsideration is denied.



James F. Hinchman
General Counsel